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WHAT IS THE SALARY THRESHOLD FOR 2025???

INQUIRING MINDS WANT TO KNOW!!

To classify an employee as exempt under federal law (i.e., Fair Labor Standards Act ("FLSA")) and the Colorado state law (i.e., Colorado Overtime and Minimum Pay Standards ("COMPS")), the employer must meet two tests: (1) salary basis; and (2) duty basis. If the employer meets both tests, the employee is not entitled to receive overtime (i.e., meeting only one of the tests is insufficient).

The salary test is seemingly the "simpler" of the two tests. After all, isn't it just simply a question of "what's the salary threshold?" and "is the employee paid at or above that amount?" But, alas, like many things in employment/human resources law, those things that are seemingly the simplest are, in fact, often not.

To start with, there are two salary-basis tests because there is the federal test (i.e., FLSA) and the state (i.e., COMPS) test. Then, there's the issue of which law covers your company.

Initially, the FLSA covers nearly every employer in Colorado and the United States (e.g., public employers; private employers; for-profit companies; not-for-profit companies; small employers; large

employers). So, this means that every employer must comply with this requirement. The Colorado law covers every private employer (e.g., for-profit and not-for-profit), but does not cover the following organizations:

- The state or its agencies or entities,
- Counties,
- Cities and counties,
- Municipal corporations,
- Quasi-municipal corporations,
- School districts, and
- Irrigation, reservoir, or drainage conservation companies or districts organized and existing under the laws of Colorado.

So, in sum, those employers covered just by the FLSA (i.e., all Colorado companies except those in the bullet list), need only comply with the FLSA's requirements. But those companies covered by both the FLSA and COMPS must comply with whatever salary threshold is higher, which these days changes more frequently than Casey Kasem's Top 25 list.

Infusing further complexity into this seemingly simple issue are different political motivations and court decisions from vastly different courts across the country. One of those Court decisions was issued by a Texas Court on November 15th.

FLSA v. COMPS SALARY THRESHOLD.

Since the FLSA's enactment in 1938, the US Department of Labor has set a minimum salary threshold employees must receive to be exempt from the FLSA's requirements. The COMPS thresholds were set by very defined amounts for 2020 through 2024, but in 2025 it is set to be raised by the Consumer Price Index for Colorado during the last year.

When 2024 started, the FLSA salary threshold was set at \$35,568. Then, the U.S. Department of Labor issued a 2024 Rule that increased the minimum salary threshold in three stages.

- First, the 2024 Rule raised the minimum threshold to \$43,888 as of July 1, 2025.
- Second, the 2024 Rule would increase the threshold to \$58,656 beginning January 1, 2025.
- Third, the 2024 Rule provided that the threshold would increase every three years thereafter based on contemporary earnings data.

No sooner was the 2024 Rule published than the State of Texas challenged its enforceability in a court of law. That Texas Court, on June 28, 2024, issued a limited injunction barring enforcement of the 2024 Rule on the State of Texas in its capacity as an employer. But for every other employer, the rule became effective. This meant that employers covered by only federal law (i.e., not covered by COMPS) had to start paying employees at least \$43,888 to be able to classify the employee as exempt.

Of course, those employers covered by COMPS really didn't worry about that increase because in 2024 COMPS's salary threshold is \$55,000. So, employers covered by COMPS were already paying an amount above the FLSA amount.

The question then became what amount employers would be required to pay in 2025. That is, the FLSA was scheduled to increase to \$58,656. COMPS, on the other hand, didn't have a specifically defined amount yet because COMPS was due to increase by an as-of-yet undetermined CPI amount. So, employers were left wondering, would that CPI amount take the COMPS salary threshold over the FLSA threshold or would the CPI come in under the FLSA amount? Perhaps, not exactly the source of frequent bar bets. But hey, for wage issues, this is pretty exciting stuff.

Then, on November 15, 2024, that same Texas Court that issued the temporary stay took some of the excitement out of the issue when the Texas Court granted a nation-wide injunction for the federal 2024 Rule. This injunction means that, for now, the 2025 increase will not take place and that the 2024 increase to \$43,888 is also nullified.

Will this decision in Texas be appealed? That decision will likely be a determination made by the Trump Administration after the inauguration on January 20, 2025. President Trump was faced with a similar decision when he became President in 2017 after a Texas Court put in place an injunction regarding President Obama's attempt to increase the salary threshold. At that time, President Trump chose not to appeal the Texas decision. So, a similar path is likely.

Of course, that leaves the question as to what the COMPS salary basis will be in 2025. Initial proposals from the Colorado Department of Labor appear to have that amount coming in at \$56,485.00. But, nothing is set in stone just yet. Stay tuned for future updates.

In sum, here's what we know as of today regarding the relevant 2025 salary thresholds:

- FLSA: \$35,568

- COMPS: An amount higher than \$55,000 and probably close to mid-\$56,000.

But that's today. Tomorrow? We'll see...

AND SPEAKING OF THE FAIR LABOR STANDARDS ACT

Earlier this summer, the United States Supreme Court agreed to hear the case of *E.M.D. Sales, Inc. v. Carrera*. This case involves the issue of what evidentiary standard courts should use when determining whether an employer has established that an employee meets one of the FLSA's duty-basis tests.

For an employee to be exempt from receiving overtime, the employer must establish that the employer paid the employee at least the relevant salary amount (see above) and that the employee meets one of the FLSA's duty-basis tests (e.g., executive, administrative, professional, making wreaths principally out of evergreens, etc.)

Courts have traditionally held that when determining the duty-basis test, courts should use the "preponderance of the evidence" test, which means, in essence, that the majority of the evidence supports the decision. But, in *Carrera*, the Fourth Circuit Court of Appeals determined that was too low of the standard and that organizations must establish that the employee met one of the FLSA's tests by the clear-and-convincing standard, which carries a greater burden than the preponderance of the evidence test. If the Supreme Court chooses to follow the 4th Circuit, employers are going to have a much more difficult time establishing that employees meet the duty-basis test at issue because they will need to meet the clear-and-convincing standard instead of the preponderance-of-the-evidence standard. A decision on this matter is expected sometime in 2025.

EDITORS



Michael C. Santo, Esq.



Christina M. Harney, Esq.



Timothy R. Wolfe, Esq.

